

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSHUA V. LOVERCAMP

Claimant

VS.

BUILDING ERECTION SERVICES, CO.

Respondent

AND

**KANSAS BUILDING INDUSTRY WORK
COMP FUND**

Insurance Carrier

Docket No. 1,064,728

ORDER

STATEMENT OF THE CASE

Claimant requested review of the March 28, 2014, Award entered by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board heard oral argument on July 15, 2014. Keith L. Mark of Mission, Kansas, appeared for claimant. Roy T. Artman of Topeka, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found claimant sustained a 7 percent functional impairment to the body as a whole as a result of his May 31, 2011, work-related accident. The ALJ adopted the impairment opinion of Dr. Terrance Pratt, a court-ordered neutral examiner, because his opinion “seemed more closely tied to the K.S.A. 44-510e rating standard” and was considered “slightly more objective” than Dr. Michael Poppa’s opinion.¹

The Board has considered the record and adopted the stipulations listed in the Award.

¹ ALJ Award (Mar. 28, 2014) at 3.

ISSUES

Claimant argues he is entitled to a 22 percent permanent partial impairment to the body as a whole, based upon both the findings of Dr. Poppa and consideration of claimant's increased symptoms after returning to work.

Respondent maintains the credible evidence of record demonstrates claimant suffered a seven percent permanent partial impairment to the body as a whole as evidenced by the medical report of Dr. Pratt.

The sole issue for the Board's review is: What is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant was an ironworker for respondent for 14 years prior to his work-related accident. The position required claimant to perform manual labor, including repetitive lifting, bending, reaching, pushing, and pulling. Claimant testified he consistently climbed ladders, wore a harness and tool belt, and carried heavy objects in the course of his employment.

On May 31, 2011, claimant and coworkers were standing in "the footing" onsite, which is an area situated approximately two feet below ground level.² Claimant testified rain the previous night made the footing muddy. Claimant gathered his materials in preparation of leaving the footing, but when he stepped up out of the footing, he slipped in the mud. Claimant stated he did not fall to the ground, and "instead of falling down, [he] just was able to spin around just a little bit and jumped back into the footing."³ Claimant experienced immediate pain in his left hip following the incident.

Respondent initially sent claimant to OHS-Compcare, where he received treatment and obtained an MRI before he was referred to Dr. John Carlisle. Dr. Carlisle reviewed claimant's MRI and provided injections. Dr. Carlisle ultimately recommended claimant undergo arthroscopic hip surgery. Records indicate Dr. Carlisle performed, in one procedure, an acetabular rim trimming, labral repair, femoral head-neck osteochondroplasty, and left capsular synovectomy to claimant's left hip. Following post-operative physical therapy, Dr. Carlisle released claimant from his care and returned him to full-duty work. Claimant testified he returned to full-time work for a different employer performing essentially the same tasks as for respondent. Claimant stated he could not

² R.H. Trans. at 7.

³ *Id.*

perform his job in the same manner or as efficiently as he could before his May 2011 injury.

Dr. Poppa, a board certified occupational medicine physician, examined claimant at his counsel's request on May 17, 2013, for independent medical evaluation (IME) purposes. Claimant complained of continued pain and symptoms concerning his left hip that impact his activities of daily living. Dr. Poppa reviewed claimant's medical records, history, and performed a physical examination. Dr. Poppa determined claimant had reached maximum medical improvement regarding the work-related injury of May 31, 2011. Dr. Poppa opined claimant's employment at respondent was the prevailing factor in causing claimant's injury, medical treatment, and disability. Dr. Poppa recommended claimant receive future medical treatment in the form of medication and home exercise despite claimant having reached maximum medical improvement.

Using the *AMA Guides*,⁴ Dr. Poppa opined claimant sustained a 25 percent impairment to the left lower extremity, or 10 percent impairment to the body as a whole, secondary to decreased strength involving the left hip with abduction graded at 4/5.⁵ In his report, Dr. Poppa initially rated claimant with a 5 percent impairment of the left hip secondary to symptomatic trochanteric bursitis, but upon consulting the *AMA Guides* during his deposition, he testified claimant actually sustained a 7 percent impairment to the hip, or a 3 percent impairment to the body as a whole. Additionally, Dr. Poppa indicated claimant sustained a 30 percent impairment to the left hip, secondary to claimant's prior surgical repair and other findings. Dr. Poppa testified he did not base this opinion on any table in the *AMA Guides*, but instead relied upon his education, training, and experience in occupational medicine.

Dr. Pratt, a court-ordered neutral physician, evaluated claimant for purposes of an IME on October 24, 2013. Claimant complained of continuous pain and aching of the left hip with numbness in the left thigh. Claimant indicated to Dr. Pratt he feels his left hip is weak with intermittent giveaway sensations, and his symptoms are exacerbated with activity. After reviewing claimant's available medical records, history, and performing a physical examination, Dr. Pratt recorded the following impression:

History of left hip dysfunction with impingement, labral tear, and chondromalacia.
Status post arthroscopic procedure with acetabular rim trimming, labral repair,
femoral head-neck junction osteochondroplasty, and left capsular synovectomy.⁶

⁴ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

⁵ Dr. Poppa testified he mistakenly recorded claimant's impairment as 10 percent to the left lower extremity in his IME. Dr. Poppa's correct rating is reflected above. (See Poppa Depo. at 25-29; Ex. 2.)

⁶ Pratt IME (Oct. 24, 2013) at 4.

Using the *AMA Guides*, Dr. Pratt opined claimant sustained a 17 percent permanent partial functional impairment of the left lower extremity at the level of the hip, which translates into a 7 percent impairment of the body as a whole.

PRINCIPLES OF LAW

K.S.A. 2011 Supp. 44-501b(a)(b)(c) states:

(a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

ANALYSIS

In determining the extent of claimant's impairment, the ALJ considered only the opinion of Dr. Pratt. The ALJ found the opinions of Dr. Poppa were not supported by the *AMA Guides*. The Board disagrees. Dr. Poppa's opinions are supported by the *AMA Guides*. No evidence was presented to prove Dr. Poppa's opinions to be unreliable.

Dr. Poppa assessed a 25 percent lower extremity impairment of function for Grade 4 hip abduction, which converts to a 10 percent body as a whole impairment. This finding is supported by the *AMA Guides* in Table 39. Dr. Poppa assessed a 7 percent lower extremity impairment of function for trochanteric bursitis, which converts to a 3 percent body as a whole impairment. This finding is supported by the *AMA Guides* in Table 64.

Dr. Poppa assessed a 30 percent lower extremity impairment of function due to surgical repair involving arthroscopy of the acetabular rim for labral repair, left hip femoral head/neck junction osteochondroplasty, and left hip capsular synovectomy with postoperative pain. In his report, Dr. Poppa wrote, “. . . I relied on my education, training and experience in Occupational Medicine, which is consistent with Section 1.3 on Page 3 of the Fourth Edition AMA Guides.”⁷ Dr. Poppa testified that Section 1.3 allows him to use his education, training and experience to arrive at an impairment rating when an impairment was not specifically listed in the *AMA Guides*.

K.S.A. 2011 Supp. 44-510e(a) requires the use of the *AMA Guides* if the impairment is contained therein. The Board notes Table 64 of the *AMA Guides* provides impairment for hip replacement, but does not contain impairment for the type of surgeries performed on claimant. Dr. Poppa’s use of his education, experience, and training to arrive at an impairment rating in this case was warranted.

Utilizing the Combined Values Chart contained in the *AMA Guides*, Dr. Poppa’s whole body impairment ratings of 10 percent for hip abduction, 3 percent for trochanteric bursitis, and 12 percent⁸ due to the surgical repairs, claimant suffers a 23 percent whole body impairment. $(12+10=21; 21+3=23)$ ⁹

Dr. Pratt assessed a 17 percent functional impairment to the left lower extremity, resulting in a 7 percent body as a whole impairment based upon Table 36 of the *AMA Guides*, which refers to, inter alia, antalgic limp and documented arthritic changes in the hip.

The Board assigns equal weight to the opinions of both Dr. Poppa and Dr. Pratt. An average of their ratings is 15 percent to the body as a whole.

CONCLUSION

The Board finds Drs. Poppa and Pratt have provided valid impairment ratings. The Board finds the two impairment ratings should be averaged. Claimant suffers a 15 percent whole body impairment.

⁷ Poppa Depo., Ex. 2 at 6.

⁸ This number was determined by using a conversion factor of .4, as noted in Dr. Poppa’s report, to convert the lower extremity impairment to a whole body impairment.

⁹ *AMA Guides* at 322.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Kenneth J. Hursh dated March 28, 2014, is modified to reflect a 15 percent functional impairment to the body as a whole.

As of August 13, 2014, there would be due and owing to the claimant 39.00 weeks of temporary total disability compensation at the rate of \$545.00 per week in the sum of \$21,255.00, plus 58.65 weeks of permanent partial disability compensation at the rate of \$545.00 per week in the sum of \$31,964.25, for a total due and owing of \$53,219.25, which is ordered paid in one lump sum, less amounts previously paid.

Future medical treatment is to remain open, upon proper application.

IT IS SO ORDERED.

Dated this _____ day of August 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Kenneth J. Hursh, Administrative Law Judge